

INDIANA UNIVERSITY NORTHWEST
Office of Diversity and Equity
Guidelines for Complaint Investigation

Revised: July, 2004

COMPLAINT: Complaint Intake; Determination of Jurisdiction; Requested Relief; Confidentiality; Prohibition against Retaliation

Complaint Intake

When a student or employee notifies the Office of Diversity and Equity (ODE) of a complaint, the Director of Diversity and Equity (DDE) will conduct a personal interview either in person or over the phone with the complainant. During the interview, the DDE may fill out an official complaint form for the case. The purpose of the interview will be to gain a clear understanding of the complaint and circumstance surrounding it. The DDE will ask questions designed to assist the complainant in thinking through exactly what happened, when and where it took place, who was involved, how often it occurred and which individuals may have witnessed the occurrence(s).

The DDE will also determine whether the complainant has confronted the individual with whom he or she is having a conflict and whether the complainant has complained to or sought the assistance from any university official, any university office or any external agency.

Determination of Jurisdiction

The ODE reviews complaints by employees and students regarding discrimination which is prohibited by federal, state, and local law as well as university policy. The DDE will ask questions designed to determine why the complainant feels that he or she has experienced discrimination and on what basis. The complainant may cite facts and circumstances relative to him/herself and/or other students or employees, the classroom environment or the workplace in general. This information will be used by the DDE to determine whether the complaint involves discrimination and should be handled by the ODE.

If the complainant presents no evidence or reasonable belief that his or her race, gender, age, disability, etc. is a basis in the complaint but the DDE feels the complaint warrants university attention, the DDE will refer the complainant to the appropriate office or university official. The complainant will be requested to keep the ODE informed of any assistance or resolution that the referral office provides. This information will be important for determining and ensuring that the complainant did receive assistance from the university.

Requested Relief

If the DDE believes the complaint is within the jurisdiction of the ODE and that the complainant has a legitimate concern (based on the facts as the complainant has related them), the DDE should determine what relief the complainant is seeking in response to the complaint. Some complainants may want advice about approaching the respondent or may want simply to make the DDE aware of a problem. The complainant may or may not want the ODE to investigate the complaint; however, *if the complaint involves alleged sexual harassment, the ODE must take some responsive action to avoid potential liability for the university.* Regardless of the relief being sought, knowing what the complainant wants will be important to any future negotiations.

At this point, the complainant will want to know how (or whether) the DDE can assist him or her in obtaining the relief requested. The DDE may explain that the ODE can conduct an investigation to see if discrimination was involved and can make recommendations to the appropriate department/administrator to resolve the complaint. The DDE may also make available training programs on different issues; educate persons in the departments regarding the law and university policy, make recommendations regarding departmental procedures and monitor activity in the department. However, the ODE does not have authority to fire, expel or otherwise discipline anyone for his/her behavior. Authority to fire, expel or otherwise discipline anyone lies within the department, the Vice Chancellors for Academic Affairs, Student Affairs, University Advancement, Fiscal Affairs, Technology and the Chancellor's Office. The DDE should make sure that the complainant understands what the ODE can and cannot do.

Confidentiality

When an individual files a complaint with the ODE the complaint is maintained as confidential. The only persons who will become aware that the individual has filed a complaint will be those who are necessarily involved in any investigation or resolution procedure. Therefore, *the DDE can only guarantee complete confidentiality to a complainant who does not want to conduct an investigation or initiate any resolution procedures.* Since the DDE must take some action when a complaint alleges sexual harassment, *the DDE cannot guarantee complete confidentiality to a sexual harassment complainant.*

A complainant may file with the ODE anonymously, but this limits the assistance the DDE can provide to the complainant and he or she should be informed of this fact. However, if a sexual harassment complaint is filed anonymously, the ODE is obligated to do whatever can be done in response to the complaint to let the alleged offender(s) know what types of behavior constitute sexual harassment and are unlawful. This may involve conducting sexual harassment workshops in the department and/or distributing materials.

Prohibition against Retaliation

When the DDE takes action in response to a complaint (informing the respondent of the charge, investigating, interviewing, negotiating, etc.), the complainant, the respondent and other appropriate persons may be informed that retaliating against the complainant for filing a complaint or otherwise opposing discriminatory practices is unlawful. Subsequent retaliation will give the complainant a new and separate basis for filing another complaint.

FACT FINDING INVESTIGATION: Initiation; Scope, Goals and Direction of Investigation; Summary of Results; Report of Findings and Recommendations

Initiation

The DDE initiates an investigation to seek the validity of any allegations which are within the jurisdiction of the ODE, unless the complainant specifically does not want an investigation. However, if the allegations involve a claim of sexual harassment, the DDE must take some action in response to the complainant, regardless of the complainant's wishes.

Scope, Goals and Direction of Investigation

Throughout the investigation and complainant process, the DDE acts as a neutral and objective fact finder. The purpose of the investigation is to gather enough evidence for the investigator, not involved parties, to make an informed decision regarding the merits of the complaint.

An investigation should begin with a clear understanding of the complaint and a chronology of the events involved which can be gained from the complainant. Depending on the information that the complainant provides, the DDE may need to review personnel/student files or other documentation, consult with other university offices for information, speak with witnesses, university officials or others with information, or consult university policies and procedures. The DDE should try to double check and verify all information as the complaint progresses.

At an appropriate point in the fact gathering process, the DDE should notify the individual(s) against whom the complaint has been filed (respondent) and obtain his/her/their account of the events involved in the complaint. As a seeker of truth, the DDE should approach all individuals, including the respondent(s) in a respectful and non-threatening fashion. The objective is to uncover as much relevant and reliable information as possible, not to "grill" witnesses and respondents and put them on the defensive.

All information gathered through the investigation should be documented and included in the complaint file.

Summary of Results

When all the information has been gathered, the DDE should analyze and summarize the information. The DDE should be able, at this point, to make a judgment regarding what sequence of events actually occurred based on whether the evidence gathered tends to support the account of the complainant or the respondent. Based on the determination of what occurred, the DDE should be able to determine the likelihood that discrimination was involved, i.e. whether it is likely that the allegations have merit.

If it is found that the allegations are likely meritorious, the DDE should develop recommendations for resolving the complaint which address the cessation of the discriminatory practice, actions to prevent their reoccurrence and avoid potential legal liability for the university.

Report of Findings and Recommendations

At the conclusion of the investigation, the DDE should prepare a summary of results and any appropriate recommendations for resolution. A guideline for the report follows:

Report Guidelines

- I. Complaint
 - A. Complainant – State the name, title, classification and department of the complainant
 - B. Basis of Complaint – State the discriminatory basis and laws or policies involved, i.e. discrimination based on race, alleged violation of Title VI
 - C. Jurisdiction – Explain why the ODE has jurisdiction over this complaint
 - D. Short Statement of Complaint
 - E. Requested Relief – State what relief that complainant is requesting

- II. Fact Finding Investigation
 - A. Scope of Investigation – Summarize and describe the various investigative measures that were taken to investigate the complaint, i.e. interviewing witnesses, examining files, etc.
 - B. Goals and Direction of Investigation – Indicate the initial questions that the investigation was designed to answer, however, the investigation progressed and what additional questions developed.
 - C. Results of Investigation – Summarize the information that was gathered and indicate what account of events was supported by the evidence. If applicable, indicate where evidence is contradicting or where a determination of what occurred cannot be made.

- III. Evaluation of the Merits of the Complaint

Based on the weight of the evidence and the DDE’s understanding of the applicable laws and/or policies involved, the DDE makes a determination that discrimination was or was not involved in the complaint. Specific behaviors or procedures that put the university at risk, if any, should be indicated. An evaluation of the extent of damage done to the complainant, if any, as a result of the discrimination should also be made.

- IV. Recommendations for University Action

Based on the DDE’s analysis of all of the information, the DDE recommends action that the university can and should take to resolve the complaint, if any. The DDE also makes recommendations that would be helpful to safeguard the university from future liability, i.e. modifying departmental procedures to ensure nondiscrimination in hiring, conducting sexual harassment workshops within the department, etc.

- V. All Supporting Documentation

RESOLUTION: Investigation Inconclusive or Complaint Likely Not Meritorious; Complaint Likely Meritorious

Investigation Inconclusive or Complaint Likely Not Meritorious

If an investigation reveals that a complaint likely does not have merit or if the facts or merit cannot be determined, the DDE should advise the complainant, respondent and any other appropriate official. The DDE should offer to have a final meeting with any of the parties to answer any questions and to inform the complainant of any alternative resolution procedures available, including filing a formal charge with an external agency or the campus grievance process. At this point, the DDE will consider the complainant's case closed.

Complaint Likely Meritorious

The goal in cases that appear to be meritorious should be to resolve the complaint internally and avoid having the complainant file a complaint with an external agency.

The official may decide to follow the recommendation(s) of the DDE, take another course of action to resolve the complaint or refuse to take any action if the official does not believe the discrimination occurred. If the official chooses a course of action that the DDE does not feel is an appropriate response to the complaint, the DDE should try to explain why the response is inappropriate and suggest an appropriate response. The DDE should indicate that the complainant will also be made aware of the findings and recommendation and emphasize the potential liability that the university would face if the complainant filed with an external agency. The DDE should remain cognizant that the ODE does not have the authority to require any university official or department to take action. What the DDE should offer is his/her best advice based upon expertise in the field of equal opportunity.

After attempting negotiations with the officials and/or department involved, the DDE should discuss with the complainant the results of the investigation, the recommendation(s) and the results of the negotiations with the department. If the complainant is not satisfied with the university's proposed action, the DDE should inform the complainant of any alternatives available for resolution of the complaint, including filing a formal charge with an external agency or with the campus grievance process. At this point, the DDE should consider the case closed pending any other action by the complainant.

Office of Diversity and Equity Outline for Complaint Investigation

INTAKE PROCESS

1. PERSONAL INTERVIEW
 - a. Gain clear understanding of complaint and complaint circumstances
 - b. Acquire insight as to whether complainant has:
 - confronted the respondent
 - complained to or sought assistance from another university official or outside agency
 - c. Complete an official complaint form

2. DETERMINE JURISDICTION
 - a. Assess why the complainant feels he/she has experienced discrimination
 - b. Determine what basis of discrimination is being alleged
 - c. Ask what facts and circumstances contribute to the basis of the complaint

JURISDICTION UNCONFIRMED

3. DETERMINE APPROPRIATE RESOURCE
 - a. If no evidence or reasonable belief is present to uphold discrimination, refer complainant to an appropriate office or official for other remedies
 - b. Request that the complainant inform the ODE of any assistance or resolution the referred office or official provides
 - c. Document any reported by the complainant for the file
 - d. Close case

JURIDICION CONFIRMED

3. DETERMINE COMPLAINANT RELIEF
 - a. Assess what remedy (ies) is being sought by the complainant. See if the complainant:
 - wants advice about approaching the respondent
 - simply wants to make the ODE aware of the problem
 - does or does not want the ODE to investigate
 - b. Advise about ODE obligation to take action on complaints alleging sexual harassment

4. EXPLAIN ODE CAPACITY TO INVESTIGATE
 - a. Inform complainant of ODE investigation scope and ability to make recommendations only to the appropriate department or administrator
 - b. Inform complainant of the ODE can make available:
 - training programs based upon certain issues
 - education programs regarding law and university policy
 - recommendations regarding department procedures
 - sexual harassment workshops

- monitoring activities for department or administration usage
- c. Inform the complainant that the ODE does not have authority to fire, expel or otherwise discipline anyone for alleged behavior
- d. Inform the complainant that anonymous filing limits the assistance the ODE can provide

5. ADDRESS CONFIDENTIALITY

- a. Assure the complainant that the ODE maintains all complaints as confidential
- b. Inform the complainant that certain persons becoming aware that a complaint has been filed will be:
 - those necessarily involved in the investigation
 - those necessarily involved in the resolution process
- c. Inform the complainant that ODE only guarantees confidentiality when there is no investigation or resolution process

6. PROTECT AGAINST RETALIATION

- a. Inform the complainant, respondent and appropriate persons that retaliation against the complainant is unlawful
- b. Inform the complainant that retaliation grants a new and separate basis for filing another complaint

INVESTIGATION PROCESS

7. PREPARE FOR INVESTIGATION

- a. Look to validate allegations under ODE jurisdiction
- b. If harassment is involved strategize action regardless of complaints wishes
- c. Position the ODE as a neutral fact finder
- d. Secure a clear understanding of the complaint and chronology of events involved

8. INITIATE INVESTIGATION

- a. Based upon complainant and respondent information, review items such as:
 - personnel files
 - written documentations
 - information from other university offices
 - witness testimony
 - university official testimony
 - university policy and procedures
 - others with information
- b. Document and analyze information collected
- c. Place all investigation information into the case file

9. SUMMARIZE INVESTIGATION RESULTS

- a. Make a judgment as to whether the sequence of events that occurred support the account of the complainant or the respondent
- b. Determine whether discrimination was meritorious or not

NON-MERITORIOUS

10. ADVISE ALL PARTIES OF COMPLAINT STATUS
 - a. Offer a final meeting with any party to answer any questions
 - b. Inform the complainant of alternative resolution procedures available such as:
 - formal charges with an external agency
 - campus grievance procedure
 - c. Close case

MERITORIOUS

11. PREPARE A SUMMARY OF RESULTS AND RECOMMENDATIONS
 - a. Follow established reporting guidelines which include:
 - complaint information
 - investigation facts
 - merit evaluation
 - recommendations for action
 - supporting documents
 - b. Remember the goal is to resolve the complaint internally and avoid external agency intervention

12. REPORT RESULTS AND RECOMMENDATIONS
 - a. Inform the official of his/her option to:
 - follow the recommendations of the ODE
 - take another course of action
 - take no action at all
 - b. Debrief the case with the official
 - c. Indict to the official that the complainant will be aware of any actions taken
 - d. Indicate potential university liability if the case falls in the hands of an external agency
 - e. Discuss the results and recommendations with the complainant. If the complainant is not satisfied with the proposed action, then inform the complainant of alternative solutions such as:
 - formal charges with an external agency
 - campus grievance procedures
 - f. Close case